AMO REPORTS 82-11

AMO RESPONSE TO BILL 11 — AN ACT TO PROVIDE FOR THE LICENSING OF BUSINESSES BY MUNICIPALITIES

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
JULY 1982

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body comprises some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural (ROMA) Section
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Asscciation of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario

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"AMO Reports 82-11" was presented to the Standing Committee on the Administration of Justice of the Legislature of Ontario on July 22, 1982.

BILL 11 - AN ACT TO PROVIDE FOR THE LICENSING OF BUSINESSES BY MUNICIPALITIES

STATEMENT

Municipal governments in Ontario have long been awaiting action on the part of the Legislature of Ontario with regard to change and clarification of legislation pertaining to municipal licensing of businesses. Over the years the Association of Municipalities of Ontario has initiated recommendations and has responded to various legislative proposals with respect to this subject.

On behalf of the Association, I am pleased to advise that the Association supports Bill 11 as a very acceptable response to the extensive consultation and reconsideration that has gone on over recent years. The Province's efforts to provide municipal governments with the general power to license businesses within a single statute is a vast improvement over the existing authority where licensing provisions within the Municipal Act are scattered, rigidly categorical and specific, and often out of date.

The Government's first proposal, Bill 119, as introduced in December 1977, was, in the opinion of the municipal organizations of that time, inadequate. As a result, Bills 105 (June, 1978) and 157 (October, 1981) were subsequently introduced and responded to by the Association. As a consequence, we now have before us Bill 11 and it is the Association's hope that the point has finally been reached where the proposed provisions can be implemented by the Legislature early this Fall.

The Association believes that the proposed legislation has satisfactorily addressed issues which have been raised in the past with regard to licensing of businesses by municipal governments. For example, the generality of municipal council to license, the delegation of licensing power over auctioneers to counties, discretion by municipalities to partially refund licencees whose license has been revoked, and the right of municipalities to establish administrative costs for a particular licensing function and to recover such costs within the license fee, are now addressed in Bill 11. The Association's presentation will address the items considered and how the legislative proposals have dealt effectively with them.

Discretion of Licensing Authority

The first issue, that is, the discretion which municipal councils are to be allowed in selecting which businesses are to be licensed, has been answered most significantly by the fact that powers to license specific businesses under the Municipal Act have been repealed and new, general provisions included within Bill 11.

The provisions of the new legislation are in keeping with the principle that elected municipal legislators should be given the power over decisions which are purely local in nature and which directly affect the best interests of the citizens of the municipality. The philosophy of "increased authority" to municipal governments, in order to bring decision-making closer to those affected, is evident within the proposed legislation. With discretion over the licensing function, municipal governments may concentrate on licensing only those businesses which are felt to need regulation in order to preserve those matters deemed to be in the public interest. The vast expansion of business regulation through licensing is not necessarily integral to the protection of the public interest.

The fear expresssed by some that municipalities will overregulate with the advent of more general licensing provisions may be allayed by pointing out that of the sixty licensing provisions available, most municipalities employ only a very few (Table I).

Municipal legislators are, by the very nature of elected office, accountable and sensitive to both the public and the business community within their political jurisdictions. Access to decision-making is fundamental to the municipal government system. Therefore, it can be expected that members of the business community, either as individuals or as a group, will use every opportunity to exercise the right of influence with respect to licensing decisions by the municipal council.

Finally, the general provisions which Bill 11 encompasses would allow municipalities to address new problems without the delay involved in securing legislative authority. This more general approach to municipal licensing powers has been implemented and appears to be working successfully in Alberta, British Columbia, and Saskatchewan.

Delegation

The delegation of licensing power over auctioneers as put forth in Section 2(3) of Bill 11 is a welcome response to many recommendations given in past reports by municipal organizations. The Municipal Liaison Committee noted in a statement to Bill 105, a predecessor to Bill 11:

> As for auctioneers, we believe that their licensing by counties and regions would be more practical, and certainly less cumbersome, particularly since their clientele usually is attracted from beyond a single "local" municipality.

This provision in Bill 11 should present itself as a most effective way of dealing with what is most often a county concern.

Refunds

One item that has caused some concern among municipalities is the section in past Bills which stated that:

> Where a licence granted in respect of a business is revoked and a fee has been paid for the granting thereof, the licensee is entitled to a refund of a part of the licence fee proportionate to the unexpired part of the term for which the license was granted. [(Bill 105, Section 4(8), 1978)]

The previous proposal to force municipalities to refund part of a license fee was not supported by any of the municipal organizations. If municipalities were to be obliged to refund portions of fees for revoked licenses, administrative costs would have escalated for the sake of what would no doubt have been refunds of a few dollars. Partial refunds on ten or twenty-five dollar fees hardly seem to be in order since the administrative costs involved in issuing the licenses and conducting the inspection would have already been incurred by the municipality. By replacing this section with the provision that municipalities "may" provide partial refunds, the decision is left to the municipal council which can better judge whether the municipality is able to afford the administrative costs related to refunds of small amounts.

Recovery of Licensing Costs

It has come to the attention of the Association that a certain amount of controversy has been raised concerning the question of to whom licensing fees are to be charged and in what amounts. Businesses and business organizations have expressed the fear that the potential for abuse of the clause in Bill 11 which provides for recovery of administrative costs for licensing by municipal councils [Section 2(6)] is too great. Fixed fees or the payment of such fees out of a municipality's general revenue is perceived as a much more amenable provision by these organizations. However, this hardly seems fair considering that businesses and citizens of other municipalities are also beneficiaries of the licensing process.

The argument that Section 2(6) is likely to be abused may be refuted by pointing out the predisposition of municipal representatives to act responsibly, the philosophy of municipal licensing as a regulatory rather than revenue-producing function, and examples of other provinces' municipal revenues from licensing where the division between licensing as a regulatory or revenue-producing function is not clearly defined.

As mentioned earlier, municipal councils are required to be accountable to the public whose best interests they serve. To create disincentives to the establishment of business within a municipality through disproportionately high licensing fees would not be deemed as responsible action on the part of the municipal council and, therefore, not very likely to occur.

Should a municipal council opt for the cost-recovery clause [Section 2(6)] rather than the ten and twenty-five dollar limits [Section 2(5)], businesses can be assured that it will be done with a great deal of care and consideration of the elements involved. AMO supports this general cost-recovery clause as the right of all municipalities to recover the costs of the licensing process in the pursuit of protecting consumers both within and outside of the particular municipality.

Further to the concern over the possibility of high licensing costs, it must be emphasized that both AMO and the Province have maintained that the licensing of businesses is for a purely regulatory purpose and should not be a source of revenue for reasons other than the costs which the licensing process itself entails. Basically stated, licenses should be enforced to provide citizens with protection against undesirable activities. The intent of this seems to be stated clearly enough in the cost-recovery formula of Section 2(6) and in the relevant sections of the Municipal Act as it now exists.

It might also be noted that the power to license transient traders remains within the Municipal Act [Section 232 (16)] and does not fall within the jurisdiction of Bill 11,largely because this function is not specifically regulatory in nature. Transient traders are charged a fee in lieu of the business tax which permanent businesses must pay as part of contributing to the general revenue of the municipality. Such a separation on the basis of maintaining the integrity of one purpose and one philosophy within a single act seems to indicate clearly the regulatory principle municipalities will follow.

Finally, it might be pointed out in response to the fear of high licensing costs that in all of the provinces across Canada, municipal revenue from licensing and permits represents only a very minute percentage of the gross general revenue (Table II). The use of business licenses in place of municipal taxes and the much more general provisions for licensing as a regulatory versus revenue-producing function make the figures for Newfoundland, Alberta, and British Columbia somewhat higher than the rest of the provinces. Even with this in mind, one must note just how small the overall proportion of revenue from licensing is.

Conclusion

What AMO presently sees before it in Bill 11 is a very acceptable and workable piece of legislation. Aside from the fine-tuning that is necessary with almost every legislative proposal, Bill 11 is consistent with the Association's views and represents a positive response to recommendations and concerns that have been raised in the past regarding licensing in the municipal sector. The consolidation of licensing provisions within one Act, the clarification and the refinement of archaic wording and clauses, and the delegation of jurisdiction over licensing to municipalities is a vast improvement to the existing provisions.

Since the proposed legislation is of direct concern to municipal government, the Association would welcome the opportunity to review the final report of the Standing Committee. It is in a spirit of optimism and cooperation that AMO wishes to offer its assistance and commentary in the hope that this will enable the proposed legislation to proceed without undue delay.

APPENDIX "A"

Representing the Association of Municipalities of Ontario:

Marlene Catterall, Alderman, City of Ottawa, Vice-President of AMO and Chairman of its Legislative and Resolutions Committee.

Charles E. Onley, Q.C., City Solicitor, City of North York and Association Counsel

MacDonald Dunbar, Executive Director of the Association

TABLE I

USE OF LICENSING PROVISIONS
BY SELECTED MUNICIPALITIES IN ONTARIO

Total Number of Licensing Provisions Available to Municipalities = 60

Municipality	City	1980 Population	Number of Licencing Provisions Used
Ajax	Town	24,927	22
Barrie	City	38,011	34
*Cambridge	City	75,716	49
Cobourg	Town	11,222	14
Cornwall	City	46,045	21
Guelph	City	73,165	30
Hamilton	City	306,640	40
London	City	261,841	35
Nepean	City	83,374	28
New Liskeard	Town	5,489	7
Orangeville	Town	13,345	9
Orillia	City	23,768	21
Oshawa	City	115,486	29
Port Elgin	Town	5,898	8
St. Catharines	City	123,617	25
Sarnia	City	49,764	33
Sault St. Marie	City	81,355	29
Vaughan	Town	25,041	7
Waterloo	City	54,157	9
Welland	City	45,485	24

*Re: Cambridge. The merging of the municipalities of Galt, Preston and Hespler into the City of Cambridge at the time of the regionalization of Waterloo may account for the larger number of provisions used.

Note: Some of the figures regarding licensing provisions may be somewhat inflated due to some confusion where more than one license is issued under a single provision.

Several municipalities have also indicated to us that municipal licensing by-laws are either under review or have been reviewed for the purpose of eliminating non-essential licensing by-laws.

TABLE II

MUNICIPAL REVENUE DERIVED FROM PERMITS AND LICENCES EXPRESSED IN THOUSANDS OF DOLLARS ($000) AND AS A PERCENTAGE OF TOTAL GROSS CURRENT REVENUES OF MUNICIPALITIES IN EACH PROVINCE, 1978

	Revenue from Licences and Permits	Gross General Revenues	% of Revenue
Newfoundland	745	103846	.72
Prince Edward Island	63	71394	.09
Nova Scotia	1182	621319	.19
New Brunswick	955	155617	.61
Quebec	11396	5902673	.19
Ontario	32577	8360278	.39
Manitoba	5595	921662	.61
Saskatchewan	4457	901827	.49
Alberta	20763	2328526	.89
British Columbia	24762	2146285	1.15
Yukon	233	12843	1.81
Northwest Territories	204	32610	.63
TOTAL	102932	2155880	.48

Source: Statistics Canada: "Local Government Finance" 1978 Catalogue 68204

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